

the bank eligible for an “outstanding” performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the FDIC will evaluate the bank’s performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The FDIC will act upon a plan within 60 calendar days after the FDIC receives the complete plan and other material required under paragraph (d) of this section. If the FDIC fails to act within this time period, the plan shall be deemed approved unless the FDIC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan’s goals, the FDIC considers the public’s involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The FDIC evaluates a plan’s measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank’s qualified investments; and

(iii) The availability and effectiveness of the bank’s systems for delivering retail banking services and the extent and innovativeness of the bank’s community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the FDIC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The FDIC approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

[60 FR 22201, May 4, 1995, as amended at 60 FR 66050, Dec. 20, 1995]

§ 345.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the FDIC assigns to a bank a rating of “outstanding,” “satisfactory,” “needs to improve,” or “substantial non-compliance” based on the bank’s performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The FDIC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an “outstanding” rating on the lending test receives an assigned rating of at least “satisfactory”;

(2) A bank that receives an “outstanding” rating on both the service test and the investment test and a rating of at least “high satisfactory” on the lending test receives an assigned rating of “outstanding”; and

(3) No bank may receive an assigned rating of “satisfactory” or higher unless it receives a rating of at least “low satisfactory” on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* Evidence of discriminatory or other illegal credit practices adversely affects the FDIC’s evaluation of a bank’s performance. In determining the effect on the bank’s assigned rating, the FDIC considers the nature and extent of the evidence, the policies and procedures that the bank has in place to prevent discriminatory or other illegal credit practices, any corrective action that the bank has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, and other relevant information.

§ 345.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the FDIC takes into account

the record of performance under the CRA of each applicant bank in considering an application for approval of:

(1) The establishment of a domestic branch or other facility with the ability to accept deposits;

(2) The relocation of the bank's main office or a branch;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for a newly chartered financial institution.

(b) *New financial institutions.* A newly chartered financial institution shall submit with its application for deposit insurance a description of how it will meet its CRA objectives. The FDIC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The FDIC takes into account any views expressed by interested parties that are submitted in accordance with the FDIC's procedures set forth in part 303 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

Subpart C—Records, Reporting, and Disclosure Requirements

SOURCE: 60 FR 22201, May 4, 1995, unless otherwise noted.

§ 345.41 Assessment area delineation.

(a) *In general.* A bank shall delineate one or more assessment areas within which the FDIC evaluates the bank's record of helping to meet the credit needs of its community. The FDIC does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the FDIC reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs (using the MSA boundaries that were in effect as of

January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking RSFs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking RSFs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond a CMSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state